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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 312

WESTERN PAPER MAKERS' CHEMICAL COMPANY AND Tanglefoot Company, appellants

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE Commission, appellees

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN

BRIEF FOR THE UNITED STATES

OPINION

Circuit Judges Denison and Knappen and District Judge Sessions denied application for interlocutory injunction and dismissed the bill of complaint (R. 52) with a full opinion (R. 53), *Western Paper Makers' Chemical Co.* v. *United States*, 7 Fed. Rep. (2d) 164.

The Commission filed three reports, *Naval Stores from Southern Producing Points to Various Destinations*, 87 I. C. C. 740 (R. 9); 89 I. C. C. 634 (R. 35). *Western Paper Makers' Chemical Co.* v. *Director General, etc.*, 91 I. C. C. 223 (R. 41).

JURISDICTION

The suit was commenced and the appeal was taken under Commerce Court Act, ch. 309, 36 Stat. 539, and Urgent Deficiencies Act, ch. 32, 38 Stat. 219, 220. The latter provides "A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree," * * *. On January 3, 1925, the final decree was entered (R. 52) and the appeal was allowed on February 19, 1925 (R. 62).

QUESTION

In making adjustments of the rates on naval stores from all of that territory lying south of Tennessee and east of the Mississippi River to destinations north of the Ohio River, did the Commission have sufficient evidence upon which to fix the South Atlantic rate to Kalamazoo the same as to Chicago and Detroit, and the rate to Grand Rapids 1 cent less than to Milwaukee; and from the Gulf the rate to Milwaukee 2 cents higher than to Chicago, and to Grand Rapids 1 cent higher than to Milwaukee? (R. 55.)

STATEMENT

In all of that territory lying south of Tennessee and east of the Mississippi River to and including both of the Carolinas, naval stores [1] (rosin and

[1] The earliest mention of turpentine and rosin seems to exist in a manuscript dated 1610, preserved in the Public Record Office, London, and entitled "Instructions for Such Things As Are To Be Sent From Virginia." Bulletin No. 229, July 28, 1915, U. S. D. of A. The bulletin shows

turpentine) are produced and shipped therefrom into all of that territory lying west of the Buffalo-Pittsburgh line on the east and to and even beyond the Mississippi River on the west (R. 10).

That southern territory is divided by the line of the Louisville & Nashville from Decatur, Ala., to Pensacola, Fla. (R. 10). The territory lying to the east of that line is known as Southeastern territory and the territory lying west is known as Mississippi Valley territory (R. 10).

By tariffs to become effective between September 1 and October 1, 1923, the carriers operating in these territories proposed "a comprehensive revision of the rates on naval stores from all points of production" (R. 10) (87 I. C. C. 740).

Attached to the report of the Commission are certain appendices which portray the rates then in force and those which were suspended (87 I. C. C. 757). Certain rosin rates in force as against those suspended from (1) South Atlantic and Gulf ports, (2) interior producing points to typical destinations, and (3) South Atlantic and Gulf ports to Ohio and Mississippi River crossings are set forth in the footnote.[2]

---

that pitch and tar were the chief products of the industry up to the middle of the eighteenth century and that their extensive use in the construction and maintenance of sailing vessels caused them to be called "naval stores," a term now applied to the turpentine and rosin industry. Witness produces excerpt of that part of the bulletin dealing with the history of the naval stores industry in the United States. The principal production of naval stores is at present in Florida and Georgia (50–54.) The largest production is in Florida (R. 69–70).

[2] See note, p. 4.

[1] NOTE:

	In force	Suspended
	Cents	*Cents*
(1) From South Atlantic ports:		
To Chicago	39	41
To Kalamazoo	39	47.5
To Milwaukee	44.5	44
To Grand Rapids	44.5	48
To Cleveland	39.5	47.5
To Detroit	39.5	47.5
To Buffalo	41	51
From Gulf ports:		
To Chicago	30	37
To Kalamazoo	34.5	47.5
To Milwaukee	33	40
To Grand Rapids	34.5	48
To Detroit	33	47.5
To Cleveland	33	47.5
To Buffalo	41	51
(2) From Valdosta, Ga.:		
To Kalamazoo	47.5	47.5
To Milwaukee	56.5	44
To Grand Rapids	53	48
To Detroit	48	47.5
To Cleveland	48	47.5
To Buffalo	49.5	51
To Chicago	47	41
From Fayetteville, N. C.:		
To Kalamazoo	48	47.5
To Milwaukee	45	49
To Grand Rapids	53.5	48
To Detroit	41	47.5
To Cleveland	38.5	47.5
To Buffalo	42	51
To Chicago	42	41
(3) From Dothan, Ala.:		
To Kalamazoo	48.5	47.5
To Milwaukee	57.5	40
To Grand Rapids	51.5	48
To Detroit	49	47.5
To Cleveland	49	47.5
To Buffalo	63	51
To Chicago	49	37
From Hattiesburg, Miss.:		
To Kalamazoo	43	47.5
To Grand Rapids	46.5	48
(4) From South Atlantic ports:		
To Louisville, Ky	27	33
To Cairo, Ill	27	33
To Memphis, Tenn	24.5	33
To St. Louis, Mo	36	37
To Cincinnati, Ohio	27	33
From Gulf ports:		
To Louisville, Ky	24.5	30
To Cairo, Ill	21.5	30
To Memphis, Tenn	24.5	27
To St. Louis, Mo	25.5	30
To Cincinnati, Ohio	27	33

After full hearings in which all of the parties, including these appellants, offered evidence and made arguments, the Commission denied the application of the carriers. Its formal order to that end is dated March 5, 1924, and is attached to its main report of the same date (R. 33). The carriers were compelled to cancel their schedules.

After thus reviewing the "comprehensive revision of the rates on naval stores from all points of production," and denying the applications of the carriers, and directing the cancellation of the schedules, the Commission found "that just and reasonable rates for the future from Jacksonville and points in Atlanta subterritory, and from New Orleans, and points in Montgomery subterritory and Mississippi Valley territory, to representative destinations" shall be as follows (R. 27) (87 I. C. C. 754):

To—	From Jacksonville		From New Orleans	
	Rosin	Turpentine	Rosin	Turpentine
	Cents	*Cents*	*Cents*	*Cents*
Cincinnati	33	52	33	52
Louisville	33	52	32	51
Cairo	33	52	28	44
St. Louis	37	58	31	49
Memphis	31	49	25	40
Nashville	30	47	30	47
Chicago	40	63	37	58
Kalamazoo	40	63	39	62
Milwaukee	41	64	38	60
Grand Rapids	41	64	40	63
Cleveland	39	62	40	63
Detroit	40	63	40	63
Columbus	37	58	37	58
Indianapolis	37	58	36	57
Buffalo	42	66	43	67

No formal order was then entered by the Commission directing that such rates shall be published and filed. The Commission announced that the respondents would be expected to establish such rates on or before May 20, 1924, and if they fail to do so, the Commission would then enter an appropriate order (R. 29) (87 I. C. C. 756).

The carriers, who had filed the schedules for the comprehensive revision, and shippers who had protested thereagainst, all filed petitions for modification of the findings and for vacation of the order and for reconsideration and reargument (R. 36). These petitions were denied with the exception of the petition for modification in some respects of the findings.

The Commission again examined the record and set forth at length, as it did in the original report, what the record showed with respect to the rates. It is difficult to conceive of a more thorough examination and consideration of the record.

The rates found reasonable from Jacksonville and New Orleans, representative points in the respective origin groups, to destinations considered in the Supplemental Report are as follows [3] (91 I. C. C. 226):

[3] It will be noted that under this adjustment the rate from the Southeast to Kalamazoo will be the same as to Chicago and Detroit, and the rate to Grand Rapids will be 1 cent less than to Milwaukee. From the Gulf ports and Mississippi territory the rate to Kalamazoo will be 2 cents higher than to Chicago, and the rate to Grand Rapids will be 1 cent higher than to Milwaukee (R. 46).

To—	From Jacksonville	From New Orleans
	Cents	*Cents*
Chicago	40	37
Kalamazoo	40	39
Milwaukee	42	39
Detroit	40	40
Grand Rapids	41	40

It is observable, therefore, that appellants defeated applications for very substantial increases in the rates. And because the Commission, *in adjusting the relation of the rates*, fixed Kalamazoo at 2 cents higher than to Chicago and Grand Rapids at 1 cent higher than to Milwaukee, from Gulf ports and Mississippi Valley territory, this bill of complaint was filed (R. 55).

Tanglefoot Company uses but 50 carloads of rosin per year (R. 43). Western Paper Makers, of Kalamazoo, are found to use 500 carloads per year. The Commission found that "complainant and the manufacturer at Milwaukee now have a division of a territory of distribution and are no longer competitors" (R. 42) (91 I. C. C. 224).

ARGUMENT

SUMMARY

I. The evidence shows that the Illinois Central Railroad by its single line route controls the rates from New Orleans to Chicago and Milwaukee, and that other carriers serving New Orleans and Gulf ports meet the rates so made (R. 47). The rates on rosin from southern producing points to Kalamazoo have always been higher than the rates to Chicago and Detroit and almost uniformly

they are and have been higher than the rates to Milwaukee (R. 113). The ~~rates~~ cars from Southeastern territory to Grand Rapids and Kalamazoo, via Ohio River crossings, are always handled by two or more lines. The operating and other conditions, therefore, as between Chicago–Milwaukee and Grand Rapids–Kalamazoo are dissimilar from points of origin.

II. The evidence shows that the rates on other articles and commodities from the territories to the destinations in question are made on the same basis as the rates on naval stores.

III. The sole question whether there was substantial evidence to support the order was adjudged against the appellants by the learned Judges of the District Court (R. 53–61). In determining that question the court will not weigh the evidence of the reasonableness of the rates or pass on the wisdom of the action of the Commission in establishing them, or substitute its judgment for the findings and conclusions of the Commission. As soon as it appears there was substantial evidence the decree will be affirmed. *New England Divisions Case*, 261 U. S. 184, 203, 204; *United States* v. *New River Co.*, 265 U. S. 533, 540, 542; *Chicago, Indianapolis & Louisville Railway* v. *United States*, 000 U. S. 000, March 1, 1926.

IV. The decree should be affirmed.

I

THE SINGLE LINE ROUTE OF THE ILLINOIS CENTRAL FROM NEW ORLEANS TO CHICAGO CONTROLS THE RATES TO CHICAGO AND MILWAUKEE. THE ~~RATES~~ cars FROM SOUTHEASTERN TERRITORY TO GRAND RAPIDS AND KALAMAZOO, VIA OHIO RIVER CROSSINGS, ARE ALWAYS HANDLED BY TWO OR MORE LINES

There was evidence to show that from New Orleans to Kalamazoo the rate should be 2 cents higher than to Chicago and that Grand Rapids should take 1 cent more than Milwaukee (R. 46).

R. J. Doss, Assistant General Freight Agent, Atlantic Coast Line Railroad, testified:

> The average distances to Chicago are, from the three important Gulf ports, 896 miles, and from the three principal South Atlantic ports, 1,054 miles. The South Atlantic port lines do not feel that they can afford to carry their rates to Chicago on Ohio River combination as against the rates announced by the Illinois Central Railroad from Gulf ports. Chicago is itself an important market and is representative of a large consuming territory south and west of Chicago. Accordingly, the South Atlantic port lines determined to establish rates from South Atlantic ports to Chicago 4 cents on rosin and 7 cents on turpentine higher than from New Orleans and other Gulf ports (R. 75).
>
> * * * * *
>
> To the destination territory east of Chicago the suspended rates from Gulf ports are made on Ohio River combination and this basis was also observed from South Atlantic ports ex-

cept that in no case were the rates from South Atlantic ports to this territory made higher than from Gulf ports.

The Illinois Central Railroad operates its own lines all the way direct from New Orleans to Chicago. It has been the position of the South Atlantic port lines that, in their own interest, as well as in the interest of the naval store shippers located on their lines, it is necessary for the South Atlantic port lines to preserve a certain relationship as between their rates from the southeast, on the one hand, and the rates of the Gulf port lines, on the other hand, in making rates to Chicago. We have always had to have that in mind in fixing naval stores adjustment from the South Atlantic ports particularly (R. 75–76).

* * * * *

In the complaint of the *Western Paper Makers Chemical Company* vs. *Director General*, Docket No. 13157, an attack was made on the rates on rosin in carloads from southern points of origin east of the Mississippi River to Kalamazoo and Grand Rapids. The complaint alleged that the rates from the south to Kalamazoo are in excess of rates from the same points to Chicago, Milwaukee, Detroit, and Jackson * * * (R. 76).

To Milwaukee from South Atlantic ports we have a through rate on rosin but not on turpentine (R. 79).

* * * * *

As to what condition at Chicago makes it necessary or makes it important that we put rates into there on the basis we have put them in.

The existence of the Illinois Central's one-line haul and the fact that they established a rate from New Orleans to Chicago, makes it necessary for us to—it is to enable our shippers to get into Chicago and that surrounding territory on a fair basis with New Orleans (R. 86).

* * * * *

The Illinois Central Railroad carriers a higher rate on naval stores from New Orleans to Kalamazoo than it carriers to Chicago. The distance via the route of the Illinois Central to Kalamazoo is substantially greater than the distance to Chicago (R. 87).

W. D. Cook, General Freight Agent, Gulf & Ship Island Railroad, testified:

In working out this revision the carriers followed substantially the existing principle, in other words, the present rates from the Mississippi Valley to Chicago are less than combination, also less than the rates to Kalamazoo, and so far as I know, there has never been any definite or fixed relationship in the rates on naval stores to Chicago and those to Kalamazoo and other C. F. A. points. As I have previously explained, the suspended rates to Chicago are made substantially the present differences over St. Louis and rates to Milwaukee are made substantially the present differences over the rates to Chicago. This was approved by the Illinois Lines. Kalamazoo, Detroit, and Jackson are in C. F. A. territory and as I have previously stated, the rates to destinations in the C. F. A. territory were made on Ohio River combination, using

the suspended rates to the Ohio River plus the proportions desired by the C. F. A. carriers beyond. The suspended rates from the Mississippi Valley to Kalamazoo, Detroit, and Jackson are the same, although higher than to Chicago. Further, Kalamazoo is not intermediate to Chicago on traffic from the Mississippi Valley. Further, that the distance from New Orleans to Chicago is approximately 912 miles, whereas the distance from New Orleans to Kalamazoo is 1,095 miles over the route through Cincinnati, the latter being obtained from the Official Guide, using southern railway distance, 835 miles, to Cincinnati plus 260 miles via the Pennsylvania beyond. Further, the distance from New Orleans to Kalamazoo via Chicago and the Michigan Central is 1,053 miles. In other words, Kalamazoo is not intermediate to Chicago from the Mississippi Valley (R. 93).

* * * * *

I am speaking for the Illinois Central as well as other lines in the Mississippi Valley, with the exception of the L. & N. I presume you might call the Illinois Central the rate-making line on naval stores between New Orleans and Cairo and New Orleans and Chicago. The Illinois Central is the direct line from there. They do not make the rates to Evansville, Louisville, and Cincinnati (R. 94).

* * * * *

As to whether, if we are justified in applying a group adjustment or blanket adjustment at points of origin having a spread of 200 miles, I still think that there should be a difference

in the rate from the Gulf ports, Pensacola to Kalamazoo over Chicago; I do. I do not think that the conditions are as controlling from Pensacola to Kalamazoo as from New Orleans to Chicago. The direct line of the Illinois Central makes the rate from New Orleans to Chicago but not from Pensacola. There is no other line in Pensacola beside the L. & N., which I represent (R. 96).

* * * * *

"A. Weil, from New Orleans to Chicago there is a one-line haul on the Illinois Central Railroad. If you get over to Kalamazoo you get into another territory, involving hauls over several lines."

There was always a one-line haul from New Orleans to Chicago; that condition has not been changed by the publication of the tariff. There has been very little change in the rate to Chicago. The change in the rate to Chicago was based upon the change in the rate to St. Louis, as we preserved practically the same differential, Chicago over St. Louis, as in effect to-day. The advantage that Chicago enjoyed, if any, due to the single-line haul to New Orleans, was effective in the old rates (R. 96–97).

L. L. Drescher, Assistant to the Vice President in charge of traffic, Louisville & Nashville Railroad, testified:

As to how I justify the per ton mile earnings of 27 cents, Pensacola to Kalamazoo, versus 27.2 cents, Pensacola to Chicago: The Illinois Central has its own line from New Orleans to Chicago. It fixes the rate on rosin

and turpentine, or did fix the rates thereon, from New Orleans to Chicago over its one line. The L. & N. Railroad gets into Chicago from Pensacola by a two-line haul. We are giving the shippers on our line the same rate as the Illinois Central gives the shippers on its line from its corresponding port. At Kalamazoo the Illinois Central has established a higher rate than it has established for its one-line haul to Chicago. We are meeting that competition at Kalamazoo. The fact that there may be some disparity in distance does not justify or require on our part, going below the competition of the Illinois Central.

I am not trying to justify the rate to Kalamazoo; I am justifying the rate by our relationship. I attempt to justify it by our relationship of our rates to the rates of the Illinois Central. If the Illinois Central can not justify it, we can not justify it (R. 99–100).

* * * * *

The Illinois Central fixed the competition, regarding the Kalamazoo versus Chicago situation, which we met. With respect to Grand Rapids and Milwaukee, we did the same thing there as we did with respect to Chicago and Kalamazoo. We made our rates the same as the rates from the other Gulf port lines. The Milwaukee rate was made over the Chicago rate, and the Illinois (Central) fixed the rate to Chicago. That is my justification of the Milwaukee rate. I am only attempting to justify the proposed rate to Grand Rapids only by way of relationship to the rates from the other ports. If the Illinois Central failed

to justify this so-called New Orleans-Chicago-Milwaukee compelled situation, we would of course keep our shippers in a position to compete with those on other lines.

We do not undertake an advance of the proposed rate from Grand Rapids to Pensacola other than I have presented in my testimony (R. 100).

S. C. MATTHEWS, Assistant Freight Traffic Manager, Pennsylvania Railroad, Southwestern Region, New Orleans, testified:

The C. F. A. lines generally feel that the rates under suspension should be permitted to become effective and believe that those rates are reasonable rates with the possible exception of some few modifications. They do not believe that from the southeast the rates are properly aligned in that tariff to Kalamazoo versus Chicago or Grand Rapids versus Milwaukee. From the Gulf ports, speaking of them as a whole, the C. F. A. lines feel that there are certain conditions that warrant possible special treatment. In other words, on account of the one-line haul, the Illinois Central Road from New Orleans to Chicago, that possibly there is a condition that would warrant, from New Orleans to Chicago, lower rates than would prevail from other Gulf ports or from the southeast including New Orleans, Gulfport, Mobile, and Pensacola. In the suspended tariff from the southeast there are two sets of rates under suspension to Chicago. One is confined in the application to the Chicago and Eastern Illinois, Monon and Illi-

nois Central roads. The other rates apply via the other lines and are somewhat higher than those applicable to the three roads mentioned. The C. F. A. lines feel that if the Illinois Central from New Orelans to Chicago establishes a rate and the other lines from New Orleans feel it proper that they should meet that rate that in so doing they should restrict the routing of it so that it would apply only to directly intermediate points to Chicago via reasonably direct routes from New Orleans to Chicago through the Ohio River (R. 101).

* * * * *

I do not think that the South Atlantic port lines should apply from South Atlantic ports to Chicago the same rate as from New Orleans to Chicago because in my opinion there is an entirely different carrier situation and condition. There is a one-line haul. I believe that the combination basis that has been referred to by Mr. Doss is the proper basis for the making of rates from the South Atlantic ports to all points within C. F. A. territory. (R. 102).

* * * * *

Q. Leaving the one-line haul out of the question entirely, do you think that we are not justified in having the same rate to New Orleans?

A. I can not leave the one-line haul out of it because it is there. It is a fact and you can not leave it out. The fact that practically all of the naval stores production is east of the Illinois Central is not at all a justification for putting that great producing territory in the

same rate situation to Chicago that the Illinois Central has.

Q. You consider that the only thing is that we must have a one-line haul into Chicago to get a similar rate?

A. You should have transportation conditions, yes, sir; and in that case it is a one-line haul. Any locality is placed at disadvantage when it has only a one-line haul. One of the criticisms I offered of the proposed adjustment was on the ground of the relationship which it will create as between Kalamazoo and Grand Rapids on the one hand and Chicago on the other. Grand Rapids and Milwaukee was another. The basis upon which the proposed rates to Kalamazoo and Grand Rapids are constructed as they now appear are satisfactory to the C. F. A. lines to those points, but not when considered with the rates published from the southeast to Chicago. I would not say that the rates as proposed to Kalamazoo and Grand Rapids are too high. I consider them reasonably low rates. I consider that the rates from the southeast to Chicago in the suspended tariff are too low (R. 104).

II

THE RATES ON OTHER ARTICLES AND COMMODITIES FROM THE TERRITORIES TO THE DESTINATIONS IN QUESTION ARE MADE ON THE SAME BASIS AS THE RATES ON NAVAL STORES

R. J. Doss, Assistant General Freight Agent, Atlantic Coast Line Railroad, testified:

The rates from the Gulf ports to Chicago and intermediate territory are made by the

Illinois Central Railroad and those rates are applied via all routes from the Gulf ports and the Mississippi Valley territory, so they have only that one set of rates to Chicago. Now, when we come to fix our rates from the southeast certain of the lines would join us in the differential basis over New Orleans. Certain other lines would not join us but insisted that the rates be made on combination as to Chicago. There are two sets of rates applying only from the Carolinas and the southeast to Chicago. The territory that lies east of the Louisville & Nashville is the territory from which the two sets of rates apply. That is the boundary line where two sets of rates apply and one set of rates applies. To C. F. A. territory east of Chicago the rates from both the Gulf ports and the southeast are made by the use of the combination of those rates to the river plus the specifics of the C. F. A. lines beyond[4] (R. 123).

* * * * *

The present rate on petroleum products from New Orleans to Chicago via the Illinois Central is 36 cents and via the other lines it is 38½ cents. The other lines did not feel that they could go as low as the rate of the Illinois Central. That same thing is true of the rate to Indianapolis. The rate is via the Illinois Central 36 cents and via the Louisville

[4] It does not appear whether this statement of the witness applied to the general structure of all rates or to rates on naval stores only. Even if the latter, other evidence indicates that the general structure of all rates is similar to that upon which the rates on naval stores are made.

& Nashville and other lines is 38½ cents. The rate on petroleum road oil from New Orleans to Chicago via Illinois Central is 30½ cents and via the other lines 32 cents. In other words 30½ cents was thought to be so low on petroleum road oil that no line except the Illinois Central would participate in it (R. 124–125).

R. L. TUTTLE, Traffic Manager for Tanglefoot Company and other companies, testified:

> Exhibit No. 146 shows the relation which the rates to other points bear to the rate of Grand Rapids, viz: The first-class proposal to Chicago is 92.4%, rosin 77.1%; Detroit class rate 100%, rosin rate 99%. From the Gulf ports the class rate proposed to Milwaukee is 96.2, while the rosin rate proposed to Milwaukee is 83⅓% of the proposed rate to Grand Rapids. The same relative comparison is carried out as to Savannah (R. 124).

S. C. MATTHEWS, Assistant Freight Traffic Manager, Pennsylvania Railroad, Southwestern Region, New Orleans, testified:

> The naval stores rates from the south for a great many years have been constructed on rates on a basis adopted by the southern roads up to the Ohio River to which were added certain arbitraries or specifics that have been served upon them by the northern roads, those specifics representing originally an average percentage north of Cincinnati and the then published through rates from New Orleans to the various destinations within C. F. A.

> territory, the percentage being an average of the per cent north of the river to each given destination via all of the C. F. A. lines serving that destination (R. 101).

GEORGE L. BOLENDER, Traffic Manager for Chemical Manufacturing Company and other companies, testified:

> The rates on rosin from southern producing points to Kalamazoo have always been higher than the rates to Chicago and Detroit. In some cases they have been higher than the rates to Grand Rapids, 50 miles farther north and almost uniformly they are and have been higher than the rates to Milwaukee (R. 113).

The testimony before the Commission embraced 748 typewritten pages and the exhibits extended the record to nearly 1,200 pages (R. 154).

The early exhibits offered by Witness Doss disclose a complete history of the rates on naval stores. Every phase of the subject was examined. Even reference at random to exhibits will indicate the thoroughness with which the whole subject was covered.

Exhibit 41 relates to per car mile earnings on rosin to Cincinnati, Chicago, Kalamazoo, and other points (R. 132).

Exhibit 42 relates to distances (R. 132).

Exhibit 44 relates to a comparison of suspended rates and per car-mile earnings on rosin with rates and per car-mile earnings on peanuts (R. 132).

Exhibit 50 covers the same subjects with respect to lumber (R. 134).

Exhibit 131 is a comparative statement of rates on asphalt, petroleum products, oyster shells, bags, and waste paper, moss and pulp board, with rates on rosin and turpentine from New Orleans and Mobile to Fort Wayne, Grand Rapids, Milwaukee, Chicago, and other points, showing mileage, present rates on other commodities and proposed rates on rosin and turpentine, average loading, per car revenue, and per car-mile earnings (R. 149).

Exhibit 144 shows distances, present and proposed rates, and ton-mile earnings, applying on rosin, carloads, from Savannah to Grand Rapids, Chicago, Milwaukee, and other points (R. 152).

The District Court thus summarized the situation (R. 59, 60):

> It will be observed that no charge of discrimination in South Atlantic rates is made. Indeed, that rate to Kalamazoo is the same as to Chicago and Detroit, and two cents less than to Milwaukee, and to Grand Rapids is one cent less than to Milwaukee. From the Gulf territory, however, Kalamazoo's rate is the same as Milwaukee's, viz: One cent less than Detroit's, but two cents higher than Chicago's; and Grand Rapid's rate is one cent higher than Milwaukee's. But the direct and logical route from Cincinnati to Kalamazoo and Grand Rapids does not pass through either Chicago, Milwaukee or Detroit. * * * The Commission further found

> that the Illinois Central controls the rates from New Orleans to Chicago, and hence to Milwaukee, and that other carriers serving New Orleans and the other Gulf ports meet the New Orleans-Chicago rate so made (91 I. C. C. 226). We think that neither these findings nor the basing of the Mississippi Valley rate to Milwaukee upon the Chicago rate can be pronounced arbitrary or beyond the Commission's authority. It seems clear that by neither the old nor the later suspended Gulf port tariffs was the rate to Cincinnati regarded as the key rate for Chicago and Milwaukee. The charge of discrimination therefore can not be sustained. *Seaboard Air Line Ry.* v. *United States*, 254 U. S. 57–62.

In *Interstate Commerce Commission* v. *Louisville & Nashville*, 227 U. S. 88, 92, in holding that "a finding without evidence is beyond the power of the Commission" (227 U. S. 92), but that there was evidence in the record sufficient to sustain the order, this Court said (227 U. S. 98):

> It is unnecessary in this case to review each of the matters discussed, ruled and found by the Commission in its Report and only the more salient facts will be mentioned. For the validity of the order does not necessarily depend upon the correctness of each of these findings, so that the breaking of one or many links by disproof would destroy the chain upon which the order depended. These findings are collateral and if correct might be confirmatory of the ruling, which, however,

might still be sustained if some of these statements were eliminated. The question is whether there was substantial evidence to support the order.

III

CONCLUSION

The decree should be affirmed.

WILLIAM D. MITCHELL,
Solicitor General.
BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

○